

ILLINOIS REGISTER

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Hearings and Enforcement Proceedings
- 2) Code Citation: 11 Ill. Adm. Code 204
- 3)

<u>Section Number:</u>	<u>Adopted Action:</u>
204.20	Amend
204.25	New
- 4) Statutory Authority: 230 ILCS 5/9(b)
- 5) Effective Date of Rulemaking: August 20, 2010
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporation by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's central office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 34 Ill. Reg. 7181 – May 21, 2010.
- 10) Has JCAR issued a Statement of Objections to this rule? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the letter issued by JCAR? Yes
- 13) Will these amendments replace any emergency amendments currently in effect? No
- 14) Are there any other proposed amendments pending in this Part? No
- 15) Summary and purpose of rulemaking: Currently rule 204.20 allows licensees to appeal all stewards' rulings and decisions through a formal administrative hearing process presided over by a hearing officer and recorded by a court reporter. Both sides are usually represented by counsel, an evidentiary hearing is conducted under formal rules of evidence, the hearing officer awaits the transcript, then produces his report and recommendation to the Board. The report and the entire record is sent to the Board members for review and presentation at the next available Board meeting. The process is

ILLINOIS REGISTER

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

often cumbersome, time consuming and expensive, with some hearings pending up to a year or two due to an arduous judiciary process.

An evidentiary administrative hearing affording maximum protection and due process to the licensee is required by Section 16 of the Horse Racing Act for any matters concerning the suspension of a license. Our current rules have extended the formal evidentiary hearing process to all appeals of steward's rulings. The result is that an appeal of a \$50 fine is afforded the same due process and administrative hearing proceeding as an appeal of a lengthy suspension, resulting in expensive, inefficient formal Board hearings to settle relatively minor matters. The proposed rulemaking provides an alternate proceeding designed to be more efficient in terms of cost and man-hours for minor matters such as appeals for fines of \$500 or less, and the disqualification of horses for interference (without a penalty to the jockey/driver) during the running of a race.

An alternative type of proceeding is not without precedent in state agencies. The Illinois Department of Revenue has an informal review procedure for taxpayer protests. Other racing jurisdictions have also adopted a two tiered appeal process. The proposed procedure will be defined as a "Director's Review Conference" or DRC. The DRC will be mandatory for appeals of steward's rulings for fines of \$500 or less and disqualifications resulting from a claim of foul or interference in the absence of a jockey/driver penalty. Licensees facing larger fines, suspensions, or disqualifications under the Medication rule Part 603, will have the option of the DRC, in lieu of an administrative hearing under Section 16 of the statute. However, any single member of the Board may sua sponte direct any appeal to a formal administrative hearing before the Board if the case merits the Board's personal attention.

Rule 204.25 lays out the procedures for the DRC. It states that the DRC's will be presided over by the Racing Board Executive Director or his designated reviewer. The Board counsels and the administrative law judges cannot serve as designated reviewers. The licensee will be able to submit documentation and present his defense in an informal setting. The designated reviewer will question the parties and any witnesses presented and consider all relevant evidence. The DRC will be recorded by audiotape or similar media.

At the conclusion of the DRC, the Executive Director or designated reviewer will render a decision. The reviewer may resolve the issue in favor of the licensee, resolve the issue in favor of the Board stewards, or modify the penalty or ruling

Final decisions from the Director's Review Conference shall not be further appealable to the Board, however, they would be subject to Illinois Administrative Review Law.

ILLINOIS REGISTER

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

- 16) Information and questions regarding these adopted amendments shall be directed to:

Mickey Ezzo
Illinois Racing Board
100 West Randolph, Suite 7-701
Chicago, Illinois 60601

(312) 814-5017

The full text of the Adopted Amendments begins on the next page:

ILLINOIS REGISTER

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 11: ALCOHOL, HORSE RACING, AND LOTTERY

SUBTITLE B: HORSE RACING

CHAPTER I: ILLINOIS RACING BOARD

SUBCHAPTER a: GENERAL RULES

PART 204

HEARINGS AND ENFORCEMENT PROCEEDINGS

Section

204.10	Applicability
204.20	Requests for Hearing
<u>204.25</u>	<u>Requests and Proceedings for Director's Review Conference</u>
204.30	Purse Distribution
204.40	Appointment and Disqualification
204.50	Transcripts
204.60	Appearances
204.65	Discovery
204.70	Service
204.80	Subpoenas
204.85	Proceedings for Hearings Involving Action by the Board
204.90	Proceedings for Hearings Involving Action by Organization Licensees
204.100	Evidence
204.110	Stipulations
204.120	Continuances
204.130	Closing Arguments
204.140	Findings of Fact and Conclusions of Law

AUTHORITY: Implementing and authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].

SOURCE: Appeals and Enforcement Proceedings, amended December 30, 1977; codified at 5 Ill. Reg. 10876; amended at 10 Ill. Reg. 3825, effective February 13, 1986; amended at 18 Ill. Reg. 7419, effective April 29, 1994; amended at 22 Ill. Reg. 14494, effective August 1, 1998; amended at 26 Ill. Reg. 10806, effective July 1, 2002; amended at 34 Ill. Reg. _____, effective _____.

Section 204.20 Requests for Hearing

ILLINOIS REGISTER

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

- a) Any person aggrieved by a final ~~decision, order, or~~ ruling of the ~~stewards~~ Stewards may, as a matter of right, request a Board hearing. ~~Such a~~ The hearing shall be a proceeding de novo.
- b) All requests for hearings shall:
 - 1) be in writing;
 - 2) contain an address and telephone number where the petitioner may be notified; and
 - 3) identify the ~~stewards'~~ Stewards' ruling and state the specific reasons for the request.
- c) Requests for hearing under this Part shall be filed no later than five business days after receipt of notice of the ~~stewards'~~ Stewards' ruling, ejection, exclusion or other action of the Board. If the petitioner is the subject of a pre-hearing suspension or exclusion, the ~~The~~ Board shall conduct ~~it's~~ its hearing within seven regular business days after the receipt of ~~such~~ the request unless the petitioner or the Board requests a postponement and shows good cause and the petitioner specifically waives the seven day hearing requirement.
- d) For appeals concerning civil penalties of \$500 or less or disqualifications based on an occurrence in the race such as interference or a claim of foul where no penalty was assessed against the driver or jockey, the petitioner shall be required to submit to a Director's Review Conference conducted pursuant to Section 204.25.
- e) For appeals concerning a suspension, exclusion, civil penalty greater than \$500, redistribution of the purse after the race results have been finalized by the Stewards, or disqualification based on a violation of 11 Ill. Adm. Code 603 (Medication), the petitioner shall be entitled to an administrative hearing pursuant to this Part or shall be given the option of submitting to a Director's Review Conference conducted pursuant to Section 204.25. Should a petitioner request a Director's Review Conference, his or her right to an administrative hearing shall be deemed waived.

ILLINOIS REGISTER

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

- f) Notwithstanding subsections (d) and (e), any single member of the Board may sua sponte direct that any appeal be subject to a formal administrative hearing if the case merits the Board's personal attention.
- ~~d)~~g) Requests for hearing may be filed in person at, or by mail addressed to, the Board's office at 100 W. Randolph, Suite 44-100 7-701, Chicago, Illinois 60601. Requests submitted by mail will be deemed timely if postmarked no later than five business days after receipt of notice of stewards' the Stewards' ruling, ejection, or exclusion or other action of the Board.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 204.25 Requests and Proceedings for Director's Review Conference

- a) Any properly filed appeal concerning a ruling of the Stewards resulting in a civil penalty in an amount of \$500 or less or for a disqualification based on an occurrence in the race such as interference or a claim of foul for which no penalty was assessed against the jockey or driver, shall be required to submit to a Director's Review Conference conducted pursuant to this Section.
- b) Any properly filed appeal concerning a ruling of the Stewards resulting in a suspension, exclusion, civil penalties greater than \$500, redistribution of the purse after the race results are finalized by the Stewards, or disqualification based on a violation of 11 Ill. Adm. Code 603 (Medication), may, in lieu of an administrative hearing, request a Director's Review Conference.
- c) The Director's Review Conference process affords licensees the opportunity to resolve protests without a formal administrative hearing before an Administrative Law Judge. The Executive Director of the Board or his or her designee shall serve as the designated reviewer in accordance with the provisions of this Section. The Executive Director or reviewer shall have authority and knowledge of the rules and regulations of the Board sufficient to make a reasoned and appropriate resolution of the matter.
- d) All requests for a Director's Review Conference shall:
- 1) be in writing;
 - 2) contain an address and telephone number where the petitioner may be notified;

ILLINOIS REGISTER

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

- 3) identify the Stewards' ruling and state the specific reasons for the request; and
- 4) include a list of all supporting documentation to be presented at the Director's Review Conference.
- e) Unless availability of the Executive Director and/or designee requires otherwise, the Director's Review Conference shall be conducted within 30 calendar days after the request.
- f) Board counsel and any Board employee who may be called as a witness shall not serve as the designated reviewer. Administrative Law Judges shall in no instance serve as the designated reviewer under this Section.
- g) At the Director's Review Conference, Board counsel shall present the Stewards' evidence to the reviewer. The licensee may be represented by counsel or may appear without counsel and present his or her evidence and witnesses. The reviewer shall consider all relevant evidence.
- h) The Illinois Administrative Procedure Act [5 ILCS 100], Section 16 of the Illinois Horse Racing Act [230 ILCS 5], and Sections 204.40, 204.50, 204.60, 204.65, 204.70, 204.80, 204.85, 204.90, 204.100, 200.110, 204.120, 204.130 and 204.140 of this Part shall not apply to the Director's Review Conference. Rules of evidence shall be construed liberally, and hearsay shall be allowed at the reviewer's discretion. The reviewer may ask questions of the witnesses and the parties during the Director's Review Conference.
- i) Director's Review Conferences conducted under this Part shall be recorded by audiotape or other similar media.
- j) At the conclusion of the Director's Review Conference, the reviewer shall issue a written report of his or her findings. The reviewer can find in favor of the licensee, uphold the Stewards' ruling, or modify the penalty. Decisions of the reviewer may not be appealed to the Board, but are subject to the Administrative Review Law [735 ILCS 5/Art. III].
- k) Requests for a Director's Review Conference may be filed in person at, or by mail addressed to, the Board's office at 100 W. Randolph, Suite 7-701, Chicago, Illinois 60601. Requests submitted by mail will be deemed timely if postmarked

ILLINOIS REGISTER

ILLINOIS RACING BOARD

NOTICE OF ADOPTED AMENDMENTS

no later than five regular business days after receipt of notice of the Stewards' ruling, ejection or exclusion or other action of the Board.

(Source: Added at 34 Ill. Reg. _____, effective_____)